S.B.CIVIL WRIT PETITION NO.4500/2004
(Ramnarayan Joshi Vs. State of Rajasthan & ors.)

Date of order : 23rd October 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.D.L.R.Vyas, for the petitioner.
Mr.R.Dave, Dy.G.A. for the respondents.

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Reportable BY THE COURT:

The petitioner, while stating his date of birth as 10.02.1940, entered the government service as Patwari on 15.03.1963 but continued till 01.05.2001 when the Collector Chittorgarh terminated his service after noticing that his date of birth was unauthorisedly changed in the service record to 10.02.1944, has preferred the instant petition for writ assailing the order passed by the Collector, Chittorgarh in departmental proceedings on 25.05.2002 (Annex.9) directing adjustment of the amount unauthorisedly received by the petitioner beyond the age of superannuation, from 01.03.1998 to 01.05.2001; and that passed by the Divisional Commissioner, Udaipur on 29.06.2004 (Annex.13) rejecting his appeal.

Factual matrix relevant for the present petition, as available from the material placed on record and more or less of undenied and undeniable facts, could be taken into comprehension thus: The petitioner entered into the services on being appointed as Patwai on 15th March 1963 stating his date of birth as 10th

February 1940. The petitioner, while submitting his Annual Performance Appraisal Reports ('APARs') until the year 1982 continued to state his date of birth as "**10.02.1940**". However, in the APARs from the year 1983-84 onwards, the date of birth of the petitioner was mentioned as "**10.02.1944**". Copies of relevant parts of some APARs upto the year 1980-81 have been placed on record by the respondents as Annexure-R/1; and a copy of the relevant part of the APAR for the year 1983-84 has been placed on record as Annexure-R/2. The respondents have also pointed out that after joining services, in his first declaration for State Insurance, the petitioner stated his date of birth specifically as 10th February 1940 (Annexure-R/3). It may be pointed out that in accord with such date of birth at 10.02.1940 as entered in the service record and continued till the year 1981-82, the petitioner was to reach the age of superannuation of 58 years on 10.02.1998; and thus, was to retire on the last day of the month of February 1998. However, for the date of birth having been changed to 10.02.1944, the petitioner continued in service beyond the month of February 1998.

The petitioner has averred in the writ petition that an anonymous complaint was sent to the Collector, Chittorgarh on 03.05.2000 (Annex.1) stating his overstaying in service for his actual date of birth being of the year 1940 and having been changed to that of the year 1944; that an enquiry was conducted

on the said complaint and by his report dated 30.05.2000 (Annex.2) the Sub-Divisional Officer, Nimbahera found the complaint to be a false one. However, yet another complaint was made (on or about 21.09.2000 – Annex.3) this time by an employee Narendra Kumar, again stating that the petitioner got altered his date of birth in the service book from 10.02.1940 to 10.02.1944 and was illegally continuing in service; and this time, after a preliminary enquiry, the Collector, Chittorgarh proceeded to serve a charge-sheet on the petitioner on 29.12.2000 (Annex. 4), who was then working as Land Record Inspector, stating the charge that he got the date of birth altered from "10.2.40" to "10.2.44" by overwriting in his service book either himself or with the help of any other employee; and attempted to continue in government service beyond the actual date of retirement. The charge against the petitioner reads thus:

> "यह है कि आरोप विवरण पत्र में अंकित विवरण अनुसार आप श्रीरामनारायण जोशी द्वारा राज्य सेवामें अधिक समय तक बने रहने की नियत के लिये मिली भगत से स्वयं अथवा अन्य कर्मचारी के सहयोग से सेवा पुस्तिका में अंको अंकित जन्म तिथी 10-2-40 को ओवर राइटिंग करवाकर तिथी 10-2-44 करवाया गया है, जिससे आप श्री जोशी पर अंकित तिथि में कांटफास, ओवर राइटिंग करवाते हुए वास्तविक सेवा निवृति तिथि के पश्चात भी अंधिक समय तक राज्य सेवामें बने रहने का दुराचरण पूर्ण कुत्सित प्रयास करने का नियम कर्तव्य एवं आचरण विरूद्ध कार्य करने का आरोप लगाया जाता है।"

The reply (Annex. 5) made by the petitioner on 10.01.2001 to such charge sheet and memorandum of charges makes an interesting reading. The petitioner stated that when a proof was

sought for the purpose of stating his birth date in the service record in words, he obtained his horoscope from his late father wherein his date of birth was stated at "10.02.1944" and showed it in the office; and while verifying his date of birth, if the office has altered the date from “10.2.40” to “10.2.44”, he was not guilty therefor. The petitioner further stated that till obtaining horoscope from his late father, he too believed his date of birth to be 10.02.1940 only and thus stated so until the year 1981-82; and the same was correctly stated at 10.02.1944 after finding the horoscope. The petitioner also contended that the allegation against him of attempting to overstay in the employment was incorrect for even before commencement of the proceedings, he had applied for voluntary retirement in the month of October 2000. The petitioner asserted that he remained only on field postings and the allegation of his altering the date of birth in the service record was absolutely baseless and imaginary.

The significant aspect of the matter remains that in the said reply the petitioner categorically stated that he would have no objection if made to retire while taking his date of birth at 10.02.1940 because he had already applied for voluntary retirement; and that the decision to be taken by the Government in relation to the pay and allowances from the date of retirement after 1st March 1998 would remain binding. The said proposition of the petitioner in the reply (Annex.5) reads thus:

> "यहाँ पर यह भी प्रार्थना है कि प्रार्थी की जन्म तारीख दिनांक 10-2-40 मानते हुए यदि सेवानिवृति कर दिया जाता है तो भी प्रार्थी को कोई आपत्ति नहीं है क्योंकि प्रार्थी पहले ही स्वेच्छिक रिटायरमेंट हेतू आवेदन कर चुका है और सेवानिवृति दिनांक 1 मार्च 98 के बाद की गई सेवा के लिये अब तक प्राप्त किये गये वेतन भत्तों आदि के बारे में राज्य सरकार का निर्णय सर्वमान्य होगा।"

It appears that before any further proceedings in the matter, the Collector concerned, of course, issued a common order on 30.03.2001 (Annex. 6) stating the date of retirement of 9 employees and therein, the petitioner's date of retirement was stated at 28.02.2002, obviously on the basis of and with reference to his date of birth then available in the service record i.e., 10.02.1944.

The Collector, however, having regard to the circumstances of the case and the reply submitted by the petitioner, and after hearing him, found that the matter was of serious concern as the date of birth of the petitioner had been altered in the service record though it was continuously maintained until the year 1983 as 10.02.1940; and the alteration in the figures and so also insertion of the words came up later on. The learned Collector proceeded to pass the order on 01.05.2001 (Annex.7) appointing the Sub-Divisional Officer, Nimbahera to enquire into the matter thoroughly and to ascertain the persons guilty in the matter; and at the same time ordered that the petitioner be immediately retired from service; that the departmental proceedings shall be decided on merits finally after

receipt of the inquiry report; and till then, no payment be made to the petitioner towards gratuity and if he be found entitled to pension, then provisional pension be accorded taking his date of birth as 10.02.1940.

The Inquiry Officer proceeded to state in his report (Annex.8) that merely on the basis of horoscope, the date of birth of the petitioner could not be determined at 10.02.1944; and the petitioner has failed to adduce any other proof in relation to his date of birth. The Inquiry Officer also opined that the petitioner got altered the date of birth in his service record by overwriting either himself or in connivance with other employee; and that charges against the petitioner stood proved. The learned Collector heard the petitioner before passing the impugned order on 15.05.2002. The petitioner took the stand that his date of birth of 10.02.1944 was stated in the words also as "दस फरवरी उन्नीस सौ चवालीस" (10th of February Nineteen Forty Four) and contended that if there was any overwriting, the same would have affected such wordings too.

The Collector examined the record and found that at the time of entry of the petitioner into the service, his date of birth was entered in Indian numerals at "10.2.40" and at that time, such particulars were not entered in the words. The learned Collector found that at the time of getting the date of birth verified from the Head of Office, the year stated in the earlier date of birth

at "40" was changed by altering the numeral "0" in the Indian style to "4" and at the same time, the date was stated in words too; and the interpolation in numeral was carried out in such a manner that even an examination from the Handwriting expert was not possible. The learned Collector also observed that the persons who were in service at the relevant time when such alteration was carried out were not likely to be in State service now; and it would be difficult to obtain the sample handwriting of such persons. In the circumstances of the case, the Collector found proved the charge against the petitioner; held him liable to retirement on the last date of February 1998; and ordered that the amount illegally received by the petitioner from 01.03.1998 to 01.05.2001 be adjusted from his pension and gratuity. However, looking to the facts and stating a liberal view, the Collector ordered that FIR be not lodged in the matter.

The petitioner challenged the said order passed by the Collector in Writ Petition No.4387/2002 before this Court wherein earlier an interim order was made on 30.10.2002 staying operation of the impugned order but then, this Court rejected the writ petition on 19.02.2004 for availability of alternative remedy of appeal. The appeal taken by the petitioner thereafter has been rejected by the Divisional Commissioner by the order dated 29.06.2004 (Annex.13) after a thorough appreciation of the entire documentary evidence relating to the service record of the

petitioner.

Assailing the orders aforesaid, learned counsel for the petitioner has essentially put a challenge to the directions issued by the Collector to recover/adjust the amount already paid to the petitioner from 01.03.1998 to 01.05.2001. It has been contended that the petitioner has not been paid without rendering services to the Government; and once the amount has been paid for the services rendered, the same cannot be recovered after so many years. It has also been contended that the findings by the learned authorities are not based on any evidence and the Department has failed to establish as to whether there was any interpolation and if at all, as to who did so. According to the learned counsel, there is nothing on record to prove that the petitioner made any such interpolation. Learned Deputy Government Advocate has duly supported the impugned orders and asserted that from the record, it is more than clear that the date of birth of the petitioner was consistently maintained at 10.02.1940 till the year 1981-82 and then it was unthorisedly changed by altering the year from “1940” to “1944". The learned Deputy Government Advocate contended that the petitioner being the only beneficiary of such alteration and having failed to establish by any reliable evidence that his date of birth was 10.02.1944, the Collector has not committed any illegality in passing the order impugned.

Having examined the material placed on record, this Court is of opinion that not only this writ petition remains bereft of substance, the error, if at all, on the part of the Collector, Chittorgarh while passing the order dated 25.05.2002 (Annex.9) had been of imposing much lesser punishment, merely of adjustment of the payment received by the petitioner beyond the month of February 1998 and then, of not lodging an FIR in the matter.

Overwhelming evidence on record as discussed by the learned Collector and by the learned Divisional Commissioner makes it clear, and the fact remains rather undeniable, that the date of birth of the petitioner was continuously stated and maintained at 10.02.1940 until the year 1981-82 in the entire of his relevant record. The year “1940” in the date of birth of the petitioner has definitely been altered later to “1944” in his service record. The fact that such alteration was in fact made is not even disputed by the petitioner who alleged that he too continuously believed his date of birth being 10.02.1940 till obtaining the horoscope. If at all the date of birth of the petitioner was to be altered in the service record on the basis of such alleged horoscope, it beats imagination that by mere overwriting and altering the numeral "0" to "4" (Indian style) and then stating such altered figures in words would accomplish the change of a material entry in the service record of a government employee;

and be taken *fait accompli*? If at all any such alteration was to be considered and was to be brought about, the petitioner was required to make a proper prayer and the appropriate authority was required to deal with such prayer in accordance with law. The suggestion of the office having been “shown” the horoscope and thus the office having altered the date of birth in the service record is not even worth a fairy tale; and could not have been accepted from any standpoint.

Having regard to the facts and circumstances of the case, when alteration was made in the service record somewhere in the year 1982-83 and the matter was being enquired into and decided in the year 2002, the observation made by the Collector of futility of further proceedings (to nab the person guilty of making such alteration) cannot be said to be wholly unwarranted; but therefrom no relief or advantage could be extended to the petitioner. This court is of view that even when not lodging FIR to investigate on the criminality part of the matter, the Collector has unnecessary been liberal while inflicting punishment upon the petitioner only to the extent of recovery of the amount paid to him from 01.03.1998 to 01.05.2001. This Court is constrained to observe that looking to the misconduct involved and unfair advantage obtained by the petitioner, the Collector ought to have considered that the petitioner has not only been unfair to the Department by altering or getting altered the service record in

clandestine manner but further, his conduct had been an offence against the society particularly of sticking to a post beyond the age of superannuation illegally and without any lawful authority; and thereby polluting the purity of administration. Such conduct further results in depriving other unemployed persons their due employment on the post to be vacated. To say the least, the punishment awarded in this case is much lesser than the deserved one.

When the fact that his date of birth was altered in the service record is not in dispute even on the part of the petitioner, and for the alteration being entirely unauthorised, the same could not have been countenanced and the petitioner was required to be retired by the end of February 1998 on the basis of his date of birth at 10.02.1940. The petitioner was conscious of his position and when the second complaint came to be made (in the month of September 2000) and it was clear to him that the matter was to be probed into, the petitioner allegedly applied for voluntary retirement (in the month of October 2000). Moreover, the petitioner specifically admitted in his reply, as reproduced hereinbefore, that he had no objection if made to retire with the end of February 1998; and then unequivocally surrendered to the decision to be taken by the authorities in relation to the payment received by him beyond the month of February 1998. Having taken such a categorical stand before the authorities, and having

been able to garner leniency in the matter of punishment, the claim of the petitioner now of being allowed the payment on the specious contention that he had worked for period in question, deserves to be rejected as dishonest a plea, apart from being meritless. The grounds so urged in this writ petition of not being denied of the amount paid towards services rendered, suffice is to say that such recovery is towards a rather disproportionately lesser punishment; and having continued on the post illegally and unauthorisedly, the petitioner cannot claim any payment. On the contrary, as commented above, the petitioner could have been, rather ought to have been, penalized yet further.

However, having regard to the circumstances, this Court would not make any comment further so far this case is concerned; but would expect from the disciplinary authorities that such cases are dealt with more sternly, strictly, and stiffly while leaving aside undue and misplaced leniencies and sympathies.

The petition remains totally bereft of substance and deserves to be dismissed. The petition having not been admitted and the Department having shown undue leniency towards the petitioner, no order is not made towards costs.

The petition is, therefore, dismissed with no order as to costs.

(DINESH MAHESHWARI),J.

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